IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.9.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.838 of 2007

Easai .. Petitioner

Vs.

1. The Commissioner of Police
Greater Chennai, Egmore
Chennai - 600 008.

2. The State of Tamil Nadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus calling for the records of the Ist respondent herein in Memo No. 157/DGFGESSV/07 setting aside the order of detention passed therein dated 10.4.2007 directing the respondents herein to produce the detenu by name Stephen, S/o George, (who is the petitioners son) before this court and setting the detenu at liberty now detained in Central Prison. Puzhal.

For Petitioner : Mr.M.Sasikumar
For Respondents : Mr.P.Kumaresan
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The first respondent herein clamped an order of detention as against the detenu - Stephen, son of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the mother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records of the detention order No.157/BDFGISSV/2007, dated 10.4.2007 passed by the first respondent, to quash the same and to direct the respondents to produce the detenu, now confined in Central Prison, Puzhal before this Court and to set him at liberty.

3. On the basis of a complaint lodged by one Srinivasan that on 28.3.2007 at about 16.00 hours, the detenu and one Nehru threatened him at the knife point and forcibly took Rs.200/- from his pocket and a wrist watch and also threatened the public who came for his rescue that they would be killed and hurled the soda water bottles against them and made them to run on all sides seeking shelter resulting in traffic dislocation, the detenu was arrested and a case was registered in Crime No.120/2007 on the file of D7, Tank Factory Police Station, for the offence punishable under Sections 341, 427, 336, 392, 397 and 506(ii) IPC.

4. The second respondent, taking the above case as a ground case and eight adverse cases pending against the detenu for the offences punishable under Sections 379, 457, 380, 511, 397 and 392 IPC and having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

5. Since the learned counsel for the petitioner assailed the order of detention mainly on the ground of delay in considering the representation of the detenu, we do not propose to go into the other aspects, as the said ground of belated consideration of the representation has to succeed. According to the learned counsel, there was a delay in serving the rejection letter on the detenu, which vitiates the order of the detention.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the case on hand, the impugned order of detention came to be passed on 10.4.2007. The detenu has made a representation dated 30.4.2007 to the Government, which was received on 2.5.2007. Remarks were called for from the detaining authority on 3.5.2007, who in turn, called for parawar remarks from the sponsoring authority and on receipt of the same by the Government on 14.5.2007, the file was circulated on 15.5.2007 and the Under Secretary and the Deputy Secretary dealt with the file on 16.5.2007 and on 17.5.2007, the Minister concerned rejected the same. It is contended that even though the rejection letter was prepared on 18.5.2007 and sent on 18.5.2007 itself, the same was served on the detenu

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

only on 24.5.2007 and in the absence of convincing reply on behalf of the State, the order of detention vitiates. We find some force in the contention of the learned counsel. Even excluding the intervening public holidays viz., 19.5.2007 and 20.5.2007 (Saturday and Sunday), there is a delay of four days in serving the rejection letter on the detenu.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476.

10. In the instant case, admittedly, there is a delay of four days in serving the rejection letter on the detenu and in the absence of valid explanation for the said delay, in our considered opinion, the same vitiates the order of detention. We are, therefore, inclined to allow this petition. Accordingly, the order of detention dated 10.4.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

ATR

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

To:

1. The Commissioner of Police
   Greater Chennai, Egmore
   Chennai - 600 008.

2. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

4. The Public Prosecutor
   High Court, Madras.

5. THE JOINT SECTRETARY TO GOVT
   (LAW & ORDER) FORT ST GEORGE) CHENNAI.

KSJ (co)

sg 08/10/07

H.C.P.No.838 of 2007
24.9.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/